

OFFICE OF THE ATTORNEY GENERAL
REGULATION REVIEW MEMORANDUM

TO: TOWN HALL

FROM: Ramona L. Taylor
Senior Assistant Attorney General
Education Section

DATE: May 25, 2021

RE: PPE Unit Fee Changes- Online Out of State Entities

Background

The Private Postsecondary Education (PPE) unit of the Academic Affairs division of the State Council of Higher Education for Virginia (SCHEV or the Council) is responsible for regulating private and out-of-state postsecondary educational institutions operating within the Commonwealth. In this role, the PPE Unit is responsible for reviewing applications for initial certification from postsecondary institutions desiring to operate in Virginia, as well as processing annual recertification applications from postsecondary institutions currently certified to operate in Virginia and mediating student complaints. The PPE unit currently regulates 126 degree-granting institutions and 165 career-technical schools at more than 300 locations throughout Virginia.

Neither Statutory nor regulatory provisions grant SCHEV general funds to perform the duties delegated to the PPE unit; however, the Code of Virginia (Virginia Code) and Administrative Code allows Council to establish nonrefundable fees for services as provided by Town Hall Agency Background Document Form: TH-02 2 the PPE unit. All salaries, benefits and expenditures are paid out of the fees collected from regulated institutions.

The issue addressed here is the need for SCHEV to increase its fees to cover the essential functions of the PPE unit. While the PPE unit performs many functions, the underlying purpose in the performance of these duties is to protect the citizens of the Commonwealth from fraudulent or substandard educational institutions and to ensure that institutions certified to operate in Virginia meet minimal academic and administrative capability standards. PPE has no other source of revenue from which to fund its operations.

The Notice for Intended Regulatory Action (NOIRA) was filed on XXX; however, since that time, fees for out-of state online institutions of higher education and post secondary schools, which are

not National Council for State Authorization Reciprocity Agreements (NC-SARA) members has been added to the regulation. These additions were made to align with the legislative mandates of the 2020 General Assembly session. Laws that will be effective July 2022, requires certification for those out of state entities to be certified by SCHEV and as such, those out-of-state entities will be required to pay initial and annual fees that are comparable to in-state institutions (schools) are required to pay.

Legal Review

Pursuant to Virginia Code § 23.1-224, Council may establish nonrefundable fees for services and methods for collecting such fees. Typically, where an agency seeks to increase fees or costs, there is generally the application of the Administrative Processes Act. Other sections of the Code, § 23.1-224 specifically, grant SCHEV the authority to regulate certain private and out-of-state institutions that operate with the Commonwealth.

In the present situation, SCHEV, through its PPE unit, is seeking to increase fees to cover direct and indirect costs of operating this critical unit. An increase in the budget will aid the Unit in obtaining the necessary resources for compliance audits, and institutional training, to cover internal processes and staff costs per the Council's authority.

Virginia Code § 2.2-4006 provides an exemption from the application of APA and Virginia Register Act in some circumstances. The Code, specifically, provides that an agency actions shall be exempt from the operation of the APA if such agency action relates to regulations fixing rates or prices and where the action relates to internal practice or proceedings.

Notwithstanding the discretionary exemption above, SCHEV seeks approval of its regulation modifying the fees charged for initial application and re-certification of out of state online institutions of higher education and post-secondary schools. This request is valid and supported by law.

Conclusion

I concur with this request and approve the request for PPE Unit fee increases relative to out of state online institutions of higher education and post-secondary schools. The request also is consistent with and not in conflict with any other laws or regulations of the Commonwealth.